IN THE

SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM 1941

No.....

ARTHUR T. LELLES, *Petitioner*

vs.

UNITED STATES OF AMERICA, *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF AND APPENDIX

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TO THE HONORABLE CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

MAY IT PLEASE THE COURT:

The petitioner, Arthur T. Lelles by William A. Gilmore, his Attorney, prays that a Writ of Certiorari issue

to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit, dated June 7, 1941 (R. 652, Vol. II), which affirmed a judgment of the United States District Court for the Western District of Washington, Northern Division, dated June 28, 1940, sentencing the defendant to three years' imprisonment on each count running concurrently (R. 55-60, Vol. I).

OPINION OF THE CIRCUIT COURT FOR THE NINTH CIRCUIT.

The Circuit Court of Appeals for the Ninth Circuit rendered an opinion which has not yet been reported but appears in Vol. II of the Transcript of the Record at page 648.

JURISDICTION OF THE SUPREME COURT.

The Supreme Court has jurisdiction to review the judgment below under Sec. 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, (43 Stat. 938) and under Rules XI and XII of the Rules of Criminal Practice and Procedure in criminal cases promulgated by the Supreme Court on May 7, 1934, pursuant to the Act of February 23, 1933. The date of the judgment of the Circuit Court of Appeals sought to be reviewed is June 7, 1941, (R. 652, Vol. II). A petition for rehearing was filed by petitioner on July 3, 1941, and within the time allowed therefor by rules of the Circuit Court, and that petition was denied on July 21, 1941. (Tr. of R. page 653, Vol. II). An order was made staying issuance of mandate to and including August 25, 1941. (Tr. of R. page 654,

Vol II) which is thirty days after the entry of the order denying the petition for rehearing, excluding, as provided in Rule XIII of the Rules of Criminal Practice and Procedure, Sundays and holidays.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED AND THE REASONS RELIED ON FOR THE ALLOWANCE OF WRIT.

On June 15, 1940, the petitioner was found guilty by a jury in the United States District Court for the Western District of Washington, Northern Division, upon an indictment charging him with the crime of using the mails in a scheme to defraud in violation of Section 338 Title 18, U. S. C. A. (U. S. Criminal Code, Sec. 215), (a copy of said section being set forth in the Appendix hereto). The indictment, (R. 2-35, Vol I), was in eight counts. Count VII was withdrawn from the consideration of the jury and the defendant was found guilty on the remaining seven counts of the indictment. (Verdict R. 52-53, Vol. I). On June 28, 1940, the defendant was sentenced by the Trial Judge to three years' imprisonment on each of six counts running concurrently and a suspended sentence on Count IV. (R. 55-60, Vol. I). The petitioner within the time allowed by the Rules of the Court filed notice of appeal to the Circuit Court of Appeals for the Ninth Circuit from the judgment of conviction and thereafter prosecuted his appeal to a conclusion in the Circuit Court of Appeals for the Ninth Circuit. (R. 652, Vol. II).

The indictment (R. 2-35, Vol. I) is exceedingly lengthy. Briefly, it charges the petitioner with devising and intending to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, by

> *"Representing himself as engaged in the business of dealing in fresh, canned, and dried mushrooms at wholesale and retail, and also engaged in the business of supplying mushroom growing outfits, including spawn, Amco Fertilizer, thermometers for testing mushrooms, and manuals of instructions for mushroom culture, under the name of Washington Mushroom Industries,"*

and the indictment further charges that the petitioner did deceive and mislead purchasers by pretending and representing the time, extent and size of his business, misleading advertisements, the easy culture of mushrooms, the simplified instructions for beginners in growing mushrooms, the quality of mushroom spawn, the replacement of spawn, the quality of Amco Fertilizer, the easy way to make money, the shipping of mushrooms to market and the value of the mushroom product, and that the petitioner used the mails in connection with his business. The eight counts of the indictment are interwoven and all practically charge the same offense of sending letters through the United States mails to further his plan or scheme.

The petitioner in his defense at the trial contended that he was engaged in a legitimate business as stated in the quotation from the indictment above, and that he had an office, warehouse and factory for several years in Seattle and some six thousand customers in the United States

and some foreign countries, all of whom were satisfied in growing and selling mushrooms under his plan and instructions, (R. 408-494, Vol. I and 495-583, Vol. II), except those who were unsuccessful and whose opinions and grievances were given to the jury by the Government, (R. 68-407, Vol. I).

SPECIFICATION OF ERRORS.

1. *The Circuit Court of Appeals erred in deciding and affirming the trial court in denying the petitioner's challenge to the legal sufficiency of the evidence at the close of the entire case,* (Assignments V, VI, VII and VIII, R. 639-41, Vol. II), *and refusing to direct a verdict in favor of the petitioner upon the grounds that there was no evidence submitted by the Government connecting the defendant with any scheme or artifice to defraud within the meaning of the section of the Criminal Code mentioned in the indictment.* (R. 650, Vol. II).

2. *The Circuit Court of Appeals erred in entering its judgment* (R. 652, Vol. II), *affirming the judgment of the trial court.*

REASONS RELIED ON BY PETITIONER FOR GRANTING WRIT OF CERTIORARI.

POINT I. *The Circuit Court of Appeals in affirming the judgment of the trial court did not give proper effect to an applicable decision of this Court and has decided a federal question in a way probably in conflict with applicable decisions of this court.*

POINT II. *The Circuit Court of Appeals in affirming the judgment of the trial court has rendered a decision in conflict with decisions of other Circuit Courts of Appeal on similar matters covered by said section of the Criminal Code involved in this case.*

POINT III. *The Circuit Court of Appeals in affirming the judgment of the trial court has decided an important question of general law in a way probably untenable and in conflict with the weight of authority.*

POINT IV. *The Circuit Court of Appeals in affirming the decision of the trial court has decided an important question of federal law applicable to the criminal statute involved which should be settled by the decision of this court.*

ARTHUR T. LELLES,
Petitioner

By WILLIAM A. GILMORE,
Attorney for Petitioner